

# House Daily Reader

**Thursday, February 03, 2005**

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# State of South Dakota

## EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

400L0204

### SENATE ENGROSSED NO. **HB 1008** - 02/01/2005

Introduced by: The Committee on Local Government at the request of the Office of the  
Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning absentee ballots.  
2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 12-19-2.1 be amended to read as follows:

4 12-19-2.1. At anytime prior to an election, a voter may apply in person to the person in  
5 charge of the election for an absentee ballot during regular office hours up to 3:00 p.m. ~~of~~ on  
6 the day of the election. If the voter applies in person, the voter shall show the person in charge  
7 of the election the voter's identification card as required in § 12-18-6.1 or complete the affidavit  
8 as provided in § 12-18-6.2.

9 In the event of ~~sickness or~~ confinement because of sickness or disability, a qualified voter  
10 may apply pursuant to the provisions of § 12-19-2 in writing for and obtain an absentee ballot  
11 by authorized messenger so designated over the signature of the voter. The person in charge of  
12 the election may deliver to the authorized messenger a ballot to be delivered to the qualified  
13 voter. An application for a ballot by authorized messenger must be received by the person in  
14 charge of the election before 3:00 p.m. the day of the election. If an application designating an  
15 authorized messenger also indicates a request for an absentee ballot for any future election, such



1 absentee ballot shall be mailed to the address provided on the application. If no address is  
2 provided, the ballot shall be mailed to the person's voter registration address.

3 Section 2. That chapter 12-19 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 If any voter who had previously filed an application or request for an absentee ballot submits  
6 another application or request for the same election with an updated address, the county auditor  
7 shall send an absentee ballot to the new address. If any voter who had previously filed an  
8 application or request for absentee ballot appears at the county auditor's office, the voter may  
9 complete another application and be allowed to vote an absentee ballot. If any voter who filed  
10 an application or request for absentee ballot notifies the county auditor that the voter never  
11 received that ballot, the voter may request that another ballot be sent to the same address. The  
12 provisions of this section only apply to a person who has not voted or returned an absentee  
13 ballot.

14 Section 3. That chapter 12-19 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 Any voter identified as being covered by the Uniformed and Overseas Citizens Absentee  
17 Voting Act (42 U.S.C. 1973ff-1) as of January 1, 2005, may submit an application or request  
18 for an absentee ballot by facsimile or emailed image to the person in charge of the election.

19 Section 4. That § 12-1-12 be amended to read as follows:

20 ~~12-1-12. No person may display any campaign material in a county courthouse during the~~  
21 ~~six weeks prior to and including election day.~~ No political party may maintain an office in a  
22 county courthouse.

23 Section 5. That § 12-1-3 be amended by adding thereto a NEW SUBDIVISION to read as  
24 follows:

1 "Polling place," a designated place voters may go to vote;

2 Section 6. That § 12-19-43 be amended to read as follows:

3 12-19-43. The county auditor may direct the board to meet on election day prior to the  
4 closing of the polls for the sole purpose of reviewing the absentee voters' affidavits appearing  
5 on the sealed ballot envelopes, if in the auditor's judgment this procedure shall be necessary due  
6 to the number of absentee ballots received. The absentee ballots may be opened, stamped, and  
7 placed in the ballot box or processed by an automatic tabulating machine, but under no  
8 circumstances shall ~~they~~ the ballots be manually counted nor any vote totals printed or displayed  
9 by any tabulating machine prior to the closing of the polls. If ballots are processed by an  
10 automatic tabulating machine prior to the closing of the polls, the resolution board shall be  
11 present and notification of such processing shall be provided to each county party chairperson  
12 at least ten days before the election.

# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0229

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1011** - 01/31/2005

Introduced by: The Committee on Judiciary at the request of the Department of Social  
Services

1 FOR AN ACT ENTITLED, An Act to establish a program of recoveries and fraud  
2 investigations in the Department of Social Services.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 28-1 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The department shall have a program of recoveries and fraud investigations to collect debts  
7 owed the department and to investigate allegations of fraud in all department assistance  
8 programs. Any fraud investigator for this program may:

9 (1) Initiate and conduct any investigation if the program has cause to believe that a  
10 fraudulent act has been committed by a recipient of assistance from department  
11 programs;

12 (2) Review any report or complaint of an alleged fraudulent act to determine whether  
13 such report requires further investigation and conduct such investigation;

14 (3) Obtain access to any record related to residence, household composition,  
15 employment, finances and resources, and medical records as authorized by the Health



1 Insurance Portability and Accountability Act of 1996 (HIPAA), PL 104-199, as  
2 amended through January 1, 2005, to assist in investigation of an alleged fraudulent  
3 act and may require by administrative subpoena the production of any book, record,  
4 or other information; and

5 (4) Cooperate with federal, state, and local law enforcement, prosecuting attorneys, and  
6 the attorney general in the investigation and prosecution of any fraudulent act where  
7 public assistance has been granted or applied for under the welfare laws of this state.

8 Section 2. The program may take any collection action provided for in state and federal law  
9 and regulation to recover debts owed the department.

10 Section 3. All investigative records and files of the program established pursuant to this Act  
11 are confidential. No investigative record may be released except to department personnel,  
12 federal, state, and local law enforcement, prosecuting attorneys, and the attorney general in the  
13 investigation and prosecution of fraudulent acts. No investigative record or file may be released  
14 to any other person except pursuant to a court order. All collection files are confidential. No  
15 collection file may be released except in accordance with recipient confidentiality requirements  
16 of the department.

17 Section 4. The secretary of the Department of Social Services shall annually report to the  
18 Governor and the Legislature concerning the activities of the program including the number and  
19 type of cases investigated, the outcome of such investigations, and costs and expenditures  
20 incurred during such investigations.

# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0228

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1012** - 01/31/2005

Introduced by: The Committee on Judiciary at the request of the Department of Social  
Services

1 FOR AN ACT ENTITLED, An Act to establish certain penalties for the unauthorized  
2 acquisition or transfer of food stamp benefits.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Any person who knowingly:

5 (1) Acquires, purchases, possesses, or uses any food stamp EBT card to obtain food  
6 stamp benefits that the person is not entitled to;

7 (2) Transfers, sells, trades, gives, or otherwise disposes of any food stamp EBT card to  
8 another person not entitled to receive or use it in exchange for anything of value;

9 (3) Acquires, purchases, possesses, or uses any eligible goods purchased with a food  
10 stamp EBT card that the person is not entitled to; or

11 (4) Transfers, sells, trades, gives, or otherwise disposes of any eligible goods purchased  
12 with a food stamp EBT card to another person not entitled to receive it in exchange  
13 for anything of value;

14 is guilty of unauthorized acquisition or transfer of food stamp benefits.

15 Section 2. Any person convicted of an offense under subdivision (1) or (2) of section 1 of



1 this Act for food stamp benefits with an EBT card value of one thousand dollars or less is guilty  
2 of a Class 1 misdemeanor. Any person convicted of an offense under subdivision (1) or (2) of  
3 section 1 of this Act for food stamp benefits with an EBT card value of one thousand dollars is  
4 guilty of a Class 6 felony. Amounts involved in the acquisition or transfer of EBT cards in  
5 violation of subdivisions (1) and (2) of section 1 of this Act, committed pursuant to one scheme  
6 or course of conduct in any twelve-month period, may be aggregated in determining the degree  
7 of the offense. Any person convicted of an offense under subdivision (3) or (4) of section 1 of  
8 this Act is guilty of a Class 1 misdemeanor.

9 Section 3. As used in this Act, the term, food stamp EBT card, means any card issued for  
10 purchase of food pursuant to the Food Stamp Act of 1997, 7 U.S.C. 2011 to 2029, inclusive, in  
11 effect on January 1, 2005.



# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0341

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1038** - 02/01/2005

**This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: The Committee on Local Government at the request of the Department of  
Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the responsibility of  
2 alcohol licensees that sell alcohol to underage people.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 35-2 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The department shall, on or before the first of July of each year, develop and publish on its  
7 public internet website, a directory listing all nationally recognized training programs which  
8 have been approved by the department. The department shall annually notify each licensee in  
9 writing and by posting on the department's internet website a list of the nationally recognized  
10 training programs approved pursuant to § 35-2-10.1. Any alcohol licensee making a prohibited  
11 sale or service of an alcoholic beverage to a person under the age of twenty-one years has the  
12 burden of proof to show that its employees have attended an approved alcohol training program  
13 to be eligible for any reduction in the penalty imposed for the violation.



# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0235

SENATE TAXATION COMMITTEE ENGROSSED NO.

**HB 1043** - 01/28/2005

Introduced by: The Committee on Taxation at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to revise the definition of the term, prepared food, for sales  
2 and use tax purposes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That subdivision (8) of § 10-45-1 be amended to read as follows:

5 (8) "Prepared food," any food sold in a heated state or heated by the seller. ~~The term,~~  
6 ~~prepared food, does not include:~~

7 ~~———— (a) Two or more food ingredients mixed or combined by the seller for sale as a~~  
8 ~~single item;~~

9 ~~———— (b) Food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish,~~  
10 ~~meat, poultry, and foods containing these raw animal foods requiring cooking~~  
11 ~~by the consumer as recommended by the Food and Drug Administration in~~  
12 ~~chapter 3, part 401.11 of its Food Code as of January 1, 2003, so as to prevent~~  
13 ~~food borne illnesses; or~~

14 ~~———— (c) Food sold with eating utensils provided by the seller, including plates, knives,~~  
15 ~~forks, spoons, glasses, cups, napkins, or straws. A plate does not include a~~



~~container or packaging used to transport the food.; two or more food ingredients mixed or combined by the seller for sale as a single item; or food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.~~

~~Prepared food does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003, so as to prevent food borne illnesses;~~

Section 2. That subdivision (8) of § 10-46-1 be amended to read as follows:

(8) "Prepared food," any food sold in a heated state or heated by the seller. ~~The term, prepared food, does not include:~~

~~———— (a) — Two or more food ingredients mixed or combined by the seller for sale as a single item;~~

~~———— (b) — Food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003, so as to prevent food borne illnesses; or~~

~~———— (c) — Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.; two or more food ingredients mixed or combined by the seller for sale as a single item; or food~~

1                   sold with eating utensils provided by the seller, including plates, knives, forks,  
2                   spoons, glasses, cups, napkins, or straws. A plate does not include a container  
3                   or packaging used to transport the food.

4                   Prepared food does not include food that is only cut, repackaged, or pasteurized by  
5                   the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods  
6                   requiring cooking by the consumer as recommended by the Food and Drug  
7                   Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003, so  
8                   as to prevent food borne illnesses;  
9

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

466L0298

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1106** - 01/28/2005

Introduced by: Representatives Boomgarden, Cutler, Deadrick, Jerke, Michels, and Schafer  
and Senators Olson (Ed), Abdallah, Broderick, Kooistra, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise the duties of certain licensed mental health  
2 professionals with regard to certain insanity and guilty-but-mentally-ill proceedings.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-10-4 be amended to read as follows:

5 23A-10-4. In an appropriate case a court shall, upon motion of a prosecuting attorney, order  
6 the defendant to submit to a ~~psychiatric~~ mental health examination by a psychiatrist or licensed  
7 psychologist, designated for this purpose by the prosecuting attorney in an order of the court.  
8 The court may also appoint medical experts and require that the defendant submit ~~himself~~ for  
9 to examination by such court-appointed medical experts. No statement made by an accused in  
10 the course of any examination provided for by this section, whether the examination was with  
11 or without the consent of the accused, ~~shall~~ may be admitted in evidence against ~~him~~ the  
12 defendant on the issue of guilt in any criminal proceeding except for the purpose of impeaching  
13 the defendant.

14 Section 2. That § 23A-10-7 be amended to read as follows:

15 23A-10-7. Subject to court approval, the defendant may be examined at an approved



1 community health center by a psychiatrist or licensed psychologist, of ~~his~~ the defendant's own  
2 choosing at ~~his~~ the defendant's own expense or, if indigent, at county expense. Examination of  
3 the defendant shall be on the issue of ~~his~~ the defendant's insanity when the offense occurred.  
4 Notice of the independent examination shall be given to the prosecuting attorney at least five  
5 days before the examination date. A psychiatrist or licensed psychologist, who examines an  
6 indigent defendant may receive a reasonable fee.

7 Section 3. That § 23A-7-16 be amended to read as follows:

8 23A-7-16. In addition to the requirements of §§ 23A-7-4 and 23A-7-5, if a defendant  
9 charged with a felony pleads guilty but mentally ill, the court may not accept the plea until the  
10 defendant has been examined by a licensed psychiatrist or licensed psychologist, and the court  
11 has examined the ~~psychiatric~~ mental health reports. The court shall hold a hearing on the  
12 defendant's mental condition; and if there is a factual basis on which the court can conclude that  
13 the defendant was mentally ill at the time of the offense, the plea shall be accepted.

14 Section 4. That § 23A-27-40 be amended to read as follows:

15 23A-27-40. If a defendant is found "guilty but mentally ill" and is placed on probation, the  
16 sentencing court, upon recommendation of a licensed psychiatrist or licensed psychologist, shall  
17 make treatment a condition of probation. Reports as specified by the sentencing court shall be  
18 filed with the court service department and the sentencing court. The defendant's failure to  
19 continue treatment, except by agreement with the treating agency and the sentencing court, is  
20 basis for commencing a probation revocation hearing and grounds for probation revocation.

# State of South Dakota

## EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

400L0316

### HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB 42** - 02/01/2005

Introduced by: The Committee on State Affairs at the request of the Department of Game,  
Fish and Parks

1 FOR AN ACT ENTITLED, An Act to revise the areas where the Game, Fish and Parks  
2 Commission may require a park license.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 41-17-13 be amended to read as follows:

5 41-17-13. A park license may be required to permit a motor vehicle and the occupants  
6 entrance to any state park (except Bear Butte when used by persons participating in religious  
7 activities) and to any of the following state recreation areas or state lakeside use areas: Lake  
8 Poinsett; the Yankton unit, the Midway unit, and the Gavins Point unit of Lewis and Clark Lake;  
9 Sandy Shore; Farm Island; Mina Lake; Richmond Lake; Lake Louise; Pickerel Lake; Angostura;  
10 Lake Vermillion; Shadehill; Llewellyn Johns; Burke Lake; Lake Cochrane; West Whitlock;  
11 Swan Creek; West Bend; Snake Creek; Walker's Point; Platte Creek; Lake Alvin; Pelican Lake;  
12 Bush's Landing; Little Bend; Lake Hiddenwood; East Whitlock; Sutton Bay; Dodge Draw; Lake  
13 Thompson; Indian Creek; Downstream (below Oahe Dam); North Point; American Creek;  
14 Randall Creek; Chief White Crane; Pierson Ranch; Spring/Cow Creek; Okobojo Point; Walth  
15 Bay; Spillway (Fort Randall Dam); Pease Creek; North Wheeler; Whetstone Bay; East Shore;



1 Peoria Flats; West Shore; West Chamberlain; South Shore; Tailrace (Fort Randall Dam);  
2 Revheim Park; Springfield; Buryanek; West Pollock; Bob's Landing; Rocky Point; and Big  
3 Sioux. The Game, Fish and Parks Commission shall, by rules promulgated pursuant to chapter  
4 1-26, set annual and daily park entrance fees. The Game, Fish and Parks Commission shall, by  
5 rules promulgated pursuant to chapter 1-26, establish a system by which owners of two or more  
6 vehicles may purchase an additional license each year for each vehicle registered to the same  
7 owner for one-half the price of the annual license. All fees collected pursuant to this section  
8 shall be deposited in the parks and recreation fund established in § 41-17-21.